

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED], Petitioner,	:	
	:	
v.	:	Docket No.
	:	OSAH-DFCS-FSP-[REDACTED]-OAKLEY
DHS, FAMILY & CHILDREN SERVICES,	:	Agency No. [REDACTED]
Respondent.	:	

INITIAL DECISION

A hearing was held on January 16, 2014, pursuant to the Petitioner's appeal of the Respondent's termination of benefits from the food stamps program on the basis of his failure to complete the interview portion of the renewal application process. The Petitioner was present and was represented by Adrienne C. Freeman, Esq. Ms. Osborne of the Division of Family and Children Services ("DFCS") appeared on behalf of Respondent. For the reasons given below, the Respondent's action is **REVERSED** and **REMANDED**.

Findings of Fact

1.

The Petitioner was notified on April 10, 2013, of the need to submit an application for the review of his continued eligibility for assistance from the food stamps program. The Petitioner submitted an application for the renewal of benefits from the food stamps program on May 10, 2013. Testimony of Ms. Osborne.

2.

The Respondent's April communication to the Petitioner included a notification that the telephone interview portion of his renewal application was scheduled for 9:30 on May 14, 2013, to be placed to the Petitioner's cell phone number. Testimony of Ms. Osborne and the Petitioner.

3.

On the date and at the time of his scheduled interview, the Petitioner awaited the receipt of the scheduled call. The Petitioner did not receive a call at the scheduled time, or at any other time during business hours of May 14, 2013. The Petitioner's cell phone did not record any missed calls on May 14, 2013. Testimony of Petitioner.

4.

The electronic case file for the Petitioner which is maintained by the Respondent contains the following entry:

“5/14/2013 09:24 AM Nancy Massey D452 Region 5 Renewal Interviewer TC to AR 678 260 4025 to complete FS Rev. Werl rec. vm left req AR call 1-877 Number for Interview.”

Testimony of Ms. Osborne. The entry in the Respondent's electronic case file for the Petitioner is not conclusive, and is of dubious value in the face of the Petitioner's credible evidence to the contrary.

5.

The Petitioner was concerned that the scheduled telephone interview did not take place, and made numerous attempts to initiate a telephone interview. The Petitioner's efforts included visits to the local DFCS office on three (3) consecutive days following the scheduled telephone interview. At each visit, the Petitioner used the telephone provided by the DFCS office to contact the designated telephone number. Despite repeated attempts to initiate a telephone interview, the Petitioner was stymied by the inoperability of the telephone system connected to the designated telephone number. The Petitioner was placed on hold for long periods of time, and experienced numerous instances of his call being dropped by the telephone system. At each visit, the Petitioner requested the assistance of personnel at the local DFCS office in his attempts

to initiate a telephone interview. The assistance which was provided did not include the provision of an interview and consisted of direction to use the telephone provided by the local DFCS office to contact the designated telephone number. Testimony of Petitioner. The electronic case file maintained by the Respondent contains verification of one of the Petitioner's attempt to initiate an interview on May 28, 2013. Testimony of Ms. Osborne.

6.

On May 31, 2013, the Petitioner was notified that his food stamp case "will be closed on May 31, 2013, for the reason that "You did not complete the required review process." As a result of the closure of his case, the Petitioner did not receive food stamp benefits for the months of June, July and August, 2013. Testimony of Ms. Osborne.

Conclusions of Law

1.

The Respondent bears the burden of proof in this matter involving the suspension of public assistance benefits. Ga. Comp. R. & Regs. 616-1-2-.07(1)(e). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The Supplemental Nutrition Assistance Program ("SNAP") (formerly known as the Food Stamp Program) is governed by the Food and Nutrition Act of 2008, 7 U.S.C. § 2011-2036a; 7 C.F.R. § 271-285; and the *Economic Support Services Manual, Volume III, of the Georgia Department of Human Services* ("*Food Stamp Manual*").

3.

The application process for the renewal of food stamps assistance includes an interview. 7 C.F.R. § 273.2(a)(2); *Food Stamp Manual* at 3105-1. The recipient is required to comply with application procedures, including participation in the interview. 7 U.S.C. § 2015(c) ("no

household shall be eligible to participate in the supplemental nutrition assistance program if it refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility”); 7 C.F.R. § 273.2(d) (“To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal.”); *Food Stamp Manual* at 3105-4. The federal regulations specifically provide that

For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5)¹ of this section.

7 C.F.R. § 273.2(d) (emphases added). The *Food Stamp Manual* also states that “[i]f the [applicant] fails to cooperate because of an inability to do so, then the county office must provide assistance with the application process.” *Food Stamp Manual* at 3105-4.

4.

In this case, the credible evidence documents the Petitioner’s desire to cooperate with the application process. Despite numerous attempts to comply with the interview requirement of the renewal process, the Petitioner was stymied by the Respondent’s non-functioning communication channels. Quite simply, the Petitioner was not able to comply. There is no credible evidence documenting the placement of a telephone call to the Petitioner at the

¹ Subsection (c)(5) requires the State agency to give the applicant notice at the time of application that it has the “responsibility to assist the household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section.”

scheduled time. Further, there is no credible evidence that the Respondent provided real assistance to the Petitioner in his quest to reschedule his interview. The Respondent's assistance consisted of the provision of a telephone communication tool that failed to function. The Respondent's termination of the Petitioner's food stamp benefits constituted a failure to adhere to the mandate of the federal regulations that "[i]f there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance." 7 C.F.R. § 273.2(d) (emphasis added); *see also Food Stamp Manual* at 3105-4. Indeed, the Respondent's manual provides in relevant part, "If the AU . . . contacts the county office to request another interview, then the count must reschedule the interview. . . In situations where the AU reports difficulty in completing a scheduled interview, explore all interview options To the extent practical, the interview must be scheduled to accommodate the needs of AUs with special circumstances." Petitioner complied with the requirement to make himself available for the required interview, and the Respondent's decision to terminate the Petitioner benefits for failure to participate in the interview process was improper.

5.

Where an individual has lost benefits as a result of agency error, "[t]he State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency." 7 C.F.R. § 273.2 (k)(1)(iii)(E); 7 C.F.R. § 273.17(a) (restoration of benefits for up to twelve months), (b) ("the State agency shall automatically take action to restore any benefits that were lost"). Furthermore, "[i]f an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application." 7 C.F.R. § 273.17(d)(1)(i). In each of the months that may be impacted, DFCS must determine if the

individual is “actually eligible,” and it must request anything needed to determine if the individual was eligible for those months. 7 C.F.R. § 273.17(d)(2).

Decision

For the above and foregoing reasons, Respondent’s decision to terminate the Petitioner’s benefits for failure to participate in the interview process is **REVERSED**. This case is **REMANDED** for the retroactive processing of Petitioner’s May, 2013, renewal application. Respondent is further directed to provide Petitioner with notice, within ten (10) days from the date of this decision of the date for a telephone interview. The notice must be provided by telephone and mail. If Petitioner completes the interview requirement, the Respondent is directed to issue to the Petitioner benefits for June, July and August, 2013.

This 24th day of January, 2014.

Lois F. Oakley
Administrative Law Judge